STATE AGRICULTURE DEVELOPMENT COMMITTEE
SADC ID #1243

In the Matter of
Holloway Land, LLC,
Chesterfield Township,
Burlington County

•Hearing Officer's Findings

•Recommendations of the State Agriculture Development Committee

I. Hearing Officer's Findings

Statement of the Case

This matter is before the State Agriculture Development Committee ("SADC" or "Committee") as a result of a complaint filed by Chesterfield Township ("Chesterfield" or "township") against Holloway Land, LLC ("Holloway"). Holloway owns 69 acres of farmland-assessed property in the township designated as Block 600, Lot 26 and having a street address of 42 Chesterfield-Georgetown Road. The farm property was preserved pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11, et seq. ("ARDA") by the Burlington County Board of Chosen Freeholders with a cost share grant from the SADC. The deed of easement dated May 8, 1985 was recorded on May 10, 1985 in the Burlington County Clerk's Office in Deed Book 3000, Page 49.

Holloway leases Block 600, Lot 26 to Honeybrook Organic Farms, LLC, which operates a community-supported agriculture (CSA) facility on the property ("Honeybrook CSA"). A CSA is essentially a private farm market in which members, called shareholders, purchase the privilege of being provided the future agricultural and horticultural output of the farm. Honeybrook CSA's shares can be purchased from October through March, and the distribution season is generally May through mid-November. Farm share members also have "pick your own" (PYO) privileges at Honeybrook CSA and can have their agricultural and horticultural goods delivered to one of fifteen off-farm sites around the state under a "boxed share program." Holloway and Honeybrook's owners, operators and/or LLC members are James F. Kinsel and Sherry Dudas, and the business names will be used interchangeably in this report.

Block 600, Lot 26 has been devoted to crop cultivation

and harvesting since at least 1984 beginning with the Glock Family, from whom fee simple title was purchased by Burlington County that year. After preserving the farm in May 1985, the county auctioned the property with agricultural restrictions to Mark Erickson in June 1985. Erickson owned the property until August 2004, when he sold the preserved farm to Holloway's immediate predecessor-in-title, William C. Forman, III. Holloway purchased the property from Forman for $765,000.00 by deed dated August 20, 2007 and recorded August 24, 2007 in the Burlington County Clerk's Office in Deed Book 6515, Page 118. That deed improperly identified the property as being located in Bordentown Township, so a corrective deed was recorded on November 29, 2007 in Deed Book 6536, Page 132 with the proper municipal designation. Honeybrook CSA began active operations in 2008.

The 2011 FA-1 form for the Holloway property, transmitted by the BCADB when the case was referred to the SADC for hearing, indicates that the farm is comprised of 41.50 acres of cropland harvested, 23.10 acres of appurtenant woodland, and 1 acre of land used in connection with a farmhouse, or total agricultural land of 65.60 acres. The FA-1 form lists, *for fruit crops*: 2 acres of strawberries and 5 acres of raspberries; *for vegetable crops*: 5 acres of snap beans, 3 acres of sweet corn, 5 acres of cucumbers, 1.6 acres of eggplant, 0.1 acre of peas, 1.75 acres of sweet peppers, 1 acre of sweet potatoes, 1 acre of spinach, 0.5 acre of squash, 3.5 acres of tomatoes and 1.2 acres of melons; *for mixed and other vegetables and other crops*: 20 acres of herbs, blueberries, beets, hot peppers, flowers, clover and okra.

The township's complaint against Holloway was filed with the Burlington County Agriculture Development Board ("BCADB" or "board") on January 19, 2011 as required by the Right to Farm Act ("RTFA"), N.J.S.A. 4:1C-10.1a. The complaint alleged that the operation of Honeybrook CSA implicated various municipal land use requirements and that Holloway needed to apply to the township planning board for site plan approval or address site plan issues "through the CADB/SADC review process". Since the matters raised by Chesterfield did not involve agricultural management practices recommended in regulations adopted by the SADC, the BCADB forwarded the dispute to the SADC on February 23, 2011 for a hearing, having first determined that Holloway had submitted satisfactory evidence that it was a

"commercial farm" entitled to the protections of the RTFA. N.J.S.A. 4:1C-10.1c; N.J.A.C. 2:76-2.10(c).

By letter dated March 2, 2011, the SADC offered the township and Holloway the services of the agency's agricultural mediation program in accordance with N.J.A.C. 2:76-18.1. In March 2011 both parties, through counsel, agreed to participate in this alternate dispute resolution process, and a mediation session was conducted by certified mediator Paul A. Massaro, Esq. on April 28, 2011. Most, but not all, of the issues in dispute were resolved through mediation, and the issues to which agreement could not be reached became the subject of the SADC hearing.

A hearing was held on July 7, 2011 at the Health & Agriculture Building in Trenton, during which sworn testimony and documentary evidence were presented to the undersigned as hearing officer. This report is prepared in accordance with N.J.S.A. 4:1C-10.1c and N.J.A.C. 2:76-2.10(c). As the hearing officer, I have set forth my findings upon which the SADC will base its recommendations to the BCADB pursuant to N.J.A.C. 2:76-2.10(c)3. The final report approved by the Committee will be submitted to the BCADB, Chesterfield Township and Holloway. The board, within 60 days of receipt of the report, will hold another hearing and issue its own written findings. Id. Anyone aggrieved by the BCADB's determination may appeal to the SADC within ten (10) days of receipt of the board's decision; if such an appeal is filed, the SADC will forward the matter to the Office of Administrative Law (OAL) as a contested case in accordance with the RTFA and agency rules. N.J.S.A. 4:1C-10.1d; N.J.A.C. 2:76-2.10(b)2ii. Pursuant to N.J.S.A. 52:14B-10 of the Administrative Procedure Act (APA), the OAL will issue an Initial Decision that can be affirmed, modified or rejected by the SADC in a Final Decision constituting final agency action appealable to the Superior Court, Appellate Division.

In requiring the SADC to conduct the first hearing in a case dealing with agricultural operations for which no regulations provide instruction, the Legislature determined that it is important for the Committee to express an initial, statewide perspective that may assist a county agriculture development board ("CADB") when the dispute is reheard at the local level. In turn, the RTFA recognizes that the CADB's decision on rehearing contributes to a collaborative effort informing the SADC of local insights.

Since the Committee may be called upon to issue a Final Decision at the end of the APA process, this Hearing Report is designed to provide appropriate guidance to the BCADB rather than an exhaustively detailed recital of facts and law.[1]

This report is limited to the issues that were not resolved by the April 28, 2011 mediation; other disputed activities of Honeybrook CSA and site conditions at Holloway, if any, are not addressed herein.

Commercial Farm and RTFA eligibility

In order to receive the protections of the RTFA, a farm must be a "commercial farm" as defined in N.J.S.A. 4:1C-3 and satisfy other requirements set forth in the introductory paragraph to N.J.S.A. 4:1C-9.

N.J.S.A. 4:1C-3 defines "Commercial farm" as:

> (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964", P.L.1964, c. 48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.).

The BCADB concluded, and at no time did Chesterfield dispute, that the Holloway property satisfied the "commercial farm" definition because it exceeds 5 acres in size, was farmland assessed, and produced agricultural and

1 The transcript of the SADC hearing, all documentary evidence, and all written materials submitted to the agency by the parties and interested persons subsequent to the conclusion of the hearing are being provided to the BCADB to assist the board in making its own determination. The facts set forth in this report are based on the testimony and written evidence introduced at the hearing, baseline data obtained from the agency's prehearing inspection of Holloway, and public documents available from Chesterfield Township and the Burlington County Clerk's Office. The documentary evidence introduced at the hearing and forming the basis of this report is set forth in the transcript index.

horticultural products worth $2,500.00 or more annually.

In respect to the annual production income requirement set forth in N.J.S.A. 4:1C-3 for farms exceeding 5 acres in size, Holloway introduced at the SADC hearing, without objection, copies of bank deposit slips dated January 28, 2010 and June 30, 2011 in the amounts of $13,145.00 and $4,478.58, respectively. These amounts do not reflect the customary, direct over-the-counter cash sale of an agricultural product by a vendor to a purchaser at a farm market; instead, the deposits represent the shareholder payments made by the members of the Honeybrook CSA. This kind of transaction, customary for CSAs, appears to contain elements of both a wholesale and retail sale of agricultural products. I find, based on the intent and purposes of the RTFA, that Honeybrook CSA shareholder payments can be considered income from the agricultural and/or horticultural production of the Holloway farm. I further find, based on the testimony and the bank deposit slips, that Honeybrook CSA's gross income is derived from the sale of member product shares at the Holloway farm location. No other proof of income was submitted by Holloway at the hearing.

The introductory paragraph of N.J.S.A. 4:1C-9 provides that a commercial farm can enjoy the benefits of RTFA protection so long as the commercial farm

> is located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c. 48 (C. 4:1C-10.1 et al. [sic]). . .

The board found, and at no time did Chesterfield dispute, that the Holloway property is located in an area in which agriculture is a permitted use as of December 31, 1997 in the municipal zoning ordinance and is consistent with the municipal master plan.

Holloway's 69 acres of land are located in the township's Agriculture (AG) District. Section 130-12 of the Chesterfield zoning ordinance, updated as of January 1, 2011, lists the principal permitted uses in the AG District and includes "[a]gricultural operations and farms". These uses are consistent with Chesterfield's 1997 municipal master plan, 2002 plan amendment and 2010 farmland

preservation plan element. Accordingly, Holloway satisfies the locational and zoning requirements for a commercial farm entitling it to RTFA protection as set forth in the introductory portion of N.J.S.A. 4:1C-9.

Site description and Honeybrook CSA operations

Exhibit A attached to this hearing report is an aerial map of the farm and its immediate surroundings. The Holloway property is located at 42 Chesterfield-Georgetown Road, a north-south municipal thoroughfare with a 45 mile per hour speed limit and one lane of travel in either direction. The roadway has a dedicated right-of-way width of 49' and a 25' paved width. The Holloway property is flaglot-shaped, with the "flag stem" about 33' wide and running due west from Chesterfield-Georgetown Road for approximately 250' before the lot expands to encompass the farmland and Honeybrook CSA operation. A mixed dirt-gravel lane driveway is situated within the flag stem; there is a driveway apron approximately 20'-25' wide at Chesterfield-Georgetown Road, but then the driveway narrows to what appears to be 1½ - 1¾ car widths (perhaps 12') at a point about 50' from the road. The driveway is the only way to enter and exit Honeybrook CSA's facility. The lane has a posted speed limit of 10 miles per hour.

The driveway is gated approximately 481' from its intersection with Chesterfield-Georgetown Road. About 300' beyond the gate are the CSA facilities, situated at and about a one-way loop road leading back to the driveway. The testimony indicates that the facilities are comprised of a frame barn used as the CSA distribution center at which the members pick up their farm products; other structures are an unused frame shed, an unused building in disrepair containing a 3-seat outhouse, and a vacant single family dwelling.

Chesterfield-Georgetown Road is relatively flat to the south of the driveway entrance servicing the Honeybrook CSA, but to the north of the driveway the road is situated roughly at the top of a crest with the descent in the northerly direction. The road begins its descent 100'-150' from the entrance driveway. Accordingly, when exiting the Honeybrook CSA from the driveway at its intersection with Chesterfield-Georgetown Road, there is good sight distance to one's right but fairly limited sight distance to one's left. In addition, vehicular traffic travelling south on

Chesterfield-Georgetown Road has limited sight distance approaching the entrance driveway on the right.

Several single family dwellings are located along the west side of Chesterfield-Georgetown Road and, on either side of the property's "flag stem", there are private residences owned by the Mills family (to the south) and by the Niemiec family (to the north). The Niemiecs operate a "car-finding" business from the residential property and use the flag stem driveway to gain access to Chesterfield-Georgetown Road.[2]

Honeybrook CSA has 300 members in 2011, 150 of whom have been assigned Tuesdays, and 150 of whom have been assigned Thursdays, to pick up their farm product shares. Hours of operation are 9:00 a.m. to 7:00 p.m. each day. PYO privileges can be exercised by CSA members from 9:00 a.m. to 7:00 p.m. on Tuesdays and Thursdays, and PYO privileges are also available for CSA and boxed share members on Saturdays and Sundays between 9:00 a.m. and 3:00 p.m.

The number of CSA members has increased, and use of the Holloway property has intensified, over the past few years. There were 150 members in 2010; in 2008 and 2009 the Holloway property was used as a boxed share drop off site, with 13 members in 2008 and 36 members in 2009.

The members drive their vehicles from Chesterfield-Georgetown Road down the driveway to the area of the barn-distribution center, where they park. The product shares are organized and picked up at the barn-distribution center, whose occupied structure is devoted primarily to dispensing the farm's output to the CSA members. After picking up their shares, the members exit the facility by continuing along the one-way loop road back to the driveway leading to Chesterfield-Georgetown Road. The same vehicular ingress and egress occurs on PYO weekends. With regard to the maximum number of customers and traffic at any one time, Ms. Dudas testified that "last year [2010] it was approximately I would say 20 members in one hour that had actually parked and had been there. We found that this year that has decreased. I would say it's probably closer to 15."

2 Holloway and Niemiec are litigating a dispute in the Superior Court, Chancery Division, Burlington County, over their respective rights to use the driveway and flag stem.

Chesterfield Township complaint and mediation

On January 19, 2011, the township filed a complaint with the BCADB against Holloway alleging that "[t]he traffic generated by the increased activity at the Holloway property has created congestion, safety hazards and poses a threat to the health and safety of the public, including the neighboring property owners. . ." The complaint noted that while Chesterfield "has a rich tradition of agricultural uses, is a leader in farmland preservation, and supports farming," when health and safety concerns arise, "the Township must require that there is safe ingress and egress, that adequate parking and signage is provided, and that commercial operations are carried out in the most safe, reasonable and responsible manner."

The BCADB forwarded the complaint to the SADC on February 23, 2011 and the SADC offered to mediate the dispute, pursuant to its agricultural mediation program, by letter dated March 2, 2011. A mediation session was held on April 28, 2011 and a written "Memorandum of Agreement" was prepared by the mediator in accordance with N.J.A.C. 2:76-18.8(h) and signed by the parties. In general, the agreement resolved issues regarding signage, driveway and parking improvements, and other site conditions.

The township and Holloway did not reach agreement as a result of the mediation on two (2) issues: (a) whether Holloway, through a licensed traffic engineer, should prepare a traffic study with regard to safe ingress and egress to the property from Chesterfield-Georgetown Road; (b) whether Holloway should be required to pave the driveway from Chesterfield-Georgetown Road to the gate, a distance of approximately 481', in order to create, according to the township, a safe travel way and mitigate noise and dust created by increased traffic associated with the CSA operation.

According to Holloway's counsel, Holloway expended approximately $14,000.00 to comply with the mediation agreement by making improvements to the driveway, installing signage, delineating and installing parking spaces, providing a handicap-accessible porta-john, and submitting a detailed written plan.

Arguments of the parties and public comments

Chesterfield Township

Chesterfield Township supports its position that Holloway should prepare a traffic study and pave about 481' of the driveway by citing to provisions of its municipal land use code addressing site plan approval and flag lots. The township also argued that the traffic study and paving were justified as a matter of public health and safety.

Section 130-4 of the township code states that "minor site plan" approval is required for new development, site alterations or building alterations requiring fewer than 10 parking spaces and/or less than 1,000 square feet of additional floor area and/or 10% additional lot coverage. A "major site plan" is defined as anything not falling under the "minor site plan" criteria.

Section 130-105 of township's site plan review ordinance allows the land use board to seek "additional information before granting preliminary approval when unique circumstances affect the tract and/or when the application for development poses special problems for the tract and surrounding areas. Such information may include, but not be limited to, drainage calculations and traffic analysis."

Christopher Trebisky, PE, the township engineer, testified that the change at the Holloway property from solely farm cultivation and harvesting up to 2007, to cultivation, harvesting and Honeybrook CSA's commercial enterprise beginning in 2008, has generated an expansion and intensity of use constituting "unique circumstances" or "special problems" that justify the need for a traffic study. Mr. Trebisky noted that the CSA has made provision for up to 20 parking spaces, that 150 cars enter and leave the property each Tuesday and Thursday, with at least one (1) car entering or leaving every 15 minutes or so, and that additional vehicular access occurs on the Saturday and Sunday PYO days when, according to Mr. Trebisky, customers can remain on and leave the site every 30 minutes. He further testified: ". . . 150 trips on a Thursday . . . creates a significant impact to the township in general and at that point site plans start[] becoming an issue[;] what is the impact as it relates to public health and safety on a township roadway and township right of way and when you

have public coming in and out of a site onto said roadway [?]."

The township engineer was also concerned about the limited sight distance to the left when exiting onto Chesterfield-Georgetown Road from the driveway servicing the Honeybrook CSA. Trebisky testified that "if you look left, you have almost no visual of what's coming in the southern direction and that is a big part of the concern that the township has."

Finally, the township maintained that a traffic study is required because of the narrowness of the flag stem (33') and its proximity to other residential properties, as a safe ingress and egress traffic width for a flag stem must be no less than 50' pursuant to the land use code. The width of the main travelled portion of the driveway---about 12'---is also a concern to the township, particularly because of the limitations on movement of emergency vehicles to the CSA site. The township engineer stated that the existing flag stem and driveway widths were "unique circumstances" or "special conditions".

With regard to flag lots, Mr. Trebisky cited various ordinance provisions as justification for paving the driveway from Chesterfield-Georgetown Road to the gate some 481' further down the lane. Section 130-10 of the township code provides that when "an additional lot or use is proposed for service from such access strip [the flag stem], the owner of the access strip shall, at his [sic] expense, pave and improve it in accordance with Township standards regulating street construction".

The township engineer construed Section 130-96F.(4) of the municipal land use code as encouraging paving of the driveway due to that ordinance's emphasis on on-site "vehicular traffic movement" and "the movement of people, goods and vehicles from access roads within the site". That section also states that "[a]ccess to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site." Paving is further justified, according to Mr. Trebisky, by Section 130-96F.(10) addressing "compatibility of residential and nonresidential development". One of the compatibility goals is to "[p]rotect residential and nonresidential development from noise, exhaust, emissions

and other negative aspects of congestion of vehicular traffic". The township engineer expressed the township's concern that the driveway servicing the Honeybrook CSA is situated between two residential properties that experience "an extremely negative impact" from dust and noise associated with the CSA traffic using a narrow, dirt-gravel driveway.

Holloway Land, LLC

Holloway argued that the township was unable to quantify its claims of traffic increases associated with the Honeybrook CSA. No traffic count was made by any municipal official and, when Mr. Trebisky was present at the site, he testified that traffic was either minimal or nonexistent. While 150 members have been assigned pick-up days on each Tuesday and Thursday, vehicle trips spread over the daily 10 hour schedule would result in an average of 15 vehicles per hour, far short of the Industrial Traffic Engineer's published standard of 100 trips per hour as constituting a "significant increase in traffic".

The township also failed to quantify, using any state, county or local standard, the amount of dust generated by vehicular traffic on the driveway. Holloway also claimed that the CSA operation was protected by Chesterfield Township's right to farm ordinance. Section 62-1 provides as follows:

§ 62-1. Right to farm, permitted use.

A. The right to farm, as defined in N.J.S.A. 4:1C-3, is hereby recognized to exist in the Township of Chesterfield, in the County of Burlington, and is hereby declared a permitted use in all zones of this Township, where an agricultural use is preexisting.

B. This right to farm includes, but not by way of limitation:

(1) Production of agricultural and horticultural crops, trees and forest products, livestock and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping.

(2) Housing and employment of necessary farm laborers.

(3) Erection of necessary agricultural buildings ancillary to agricultural and horticultural production.

(4) The grazing of animals and use of range for fowl.

(5) Construction of fences for livestock and fowl, as well as to control depredation by wildlife.

(6) The operation and transportation of large, slow-moving equipment over roads within the Township of Chesterfield.

(7) Control of pests, predators and diseases of plants and animals.

(8) Conduction of agricultural-related education and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm and permission of the farm owner and lessee is obtained.

(9) Use of irrigation pumps and equipment, aerial and ground seeding and spraying, tractors, harvest aides and other equipment.

(10) Processing and packaging of the agricultural output of the commercial farm.

(11) The operation of a farm market, including the construction of business and parking areas in conformance with Chesterfield Township standards.

(12) The operation of a pick-your-own operation, meaning a direct-marketing alternative wherein retail or wholesale customers are invited onto a commercial farm in order to harvest agricultural, floricultural or horticultural products.

(13) Replenishment of soil nutrients and improvement of soil filth.

(14) Clearing of woodlands using open burning and other techniques; installation and maintenance of vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas.

(15) On-site disposal of organic agricultural wastes.

(16) The application of manure and chemical fertilizers, insecticides and herbicides in accordance with manufacturers' instructions.

(17) Agricultural-related educational and farm-based recreational activities, provided that the activities are related to marketing the agricultural or horticultural output of the farm, including but not limited to equestrian activities, including the boarding of horses and riding instructions.

(18) Harvesting of timber.

C. The foregoing activities must be in conformance with applicable federal and state law.

D. The foregoing practices and activities may occur on holidays, weekdays and weekends by day or night and shall include the attendant or incidental noise, odors, dust and fumes associated with these practices.

E. It is hereby determined that whatever nuisance may be caused to others by these uses and activities is more than offset by the benefits of farming to the neighborhood community and society in general.

F. Any person aggrieved by the operation of a commercial farm shall file a complaint with the Burlington County Agriculture Development Board prior to filing an action in court.

G. An additional purpose of this chapter is to promote a good neighbor policy by advising purchasers and users of property within 500 feet from the lot line of any agricultural operation of the potential discomforts associated with such purchase or residence. It is intended that, through mandatory disclosures, purchasers and users will better understand the impacts of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near land actively devoted to commercial agriculture (or in an agricultural development area, meaning an area identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18, and certified by the State Agriculture Development Committee). The disclosure required by this subsection is set forth in the disclosure form attached hereto and made a part hereof. [Footnote omitted].

H. It is the intent of this chapter to require all developers in Chesterfield Township to include language in their deeds advising buyers of this Right to Farm Ordinance and to permit the Planning Board to require this language as part of any subdivision or site plan approval.

> I. The Township Planning Board shall, as part of any subdivision or site plan approval, direct any developer to include in their deeds to buyers, advisement of this Right to Farm Ordinance.

Holloway asserted that Section 62-1D. recognizes Honeybrook's right to engage in practices resulting in "attendant or incidental noise, odors, dust and fumes associated with" the CSA's operations.

Ms. Dudas made a PowerPoint© presentation in which several other farm stands and CSA operations identified in Chesterfield Township were not required to obtain site plan approval, to order a traffic study or to pave their driveways. She also testified that the traffic study and paving will cost Holloway about $7,000.00. When questioned, Ms. Dudas was unable to say whether the sites in the PowerPoint© presentation were flag lots, had small lot frontages or were the subject of neighbor complaints regarding traffic and dust.

Holloway also strongly disputed the applicability of township land use ordinances to the Honeybrook CSA operation, arguing that the property was still being operated as a farm and its use had not changed, that delineating additional on-site parking merely formalized existing arrangements and was not "additional" parking within the meaning of the municipal site plan ordinance, that a CSA was a permitted activity under the RTFA and therefore exempt from the township's definition of "development" triggering site plan review, and that the site plan requirement of a traffic study was unenforceable due to the absence of standards governing when such a study was necessary.

According to Holloway, the only real traffic issue is the speed limit on Chesterfield-Georgetown Road, a municipal road over which the township has exclusive jurisdiction and whose speed limit can be reduced by enactment of a local ordinance.

Public comments

Seven (7) members of the public attended the hearing, were sworn in by the undersigned, and provided testimony. The record was kept open to accommodate the receipt of another 30 written statements from other members of the

public supporting Holloway and the Honeybrook CSA or expressing concern about traffic and dust problems. All of the written comments were carefully considered in the preparation of this Hearing Report, and I do not believe it is necessary to recite their contents in detail. However, some of the sworn testimony from members of the public who took the time to attend the hearing is of some importance and will be summarized.

Beverly Mills owns and resides on the property to the immediate south of the driveway servicing the Honeybrook CSA. Her family purchased the property before the CSA operation began and, according to her, the current use of the Holloway farm has negatively impacted her quality of life. The Mills driveway next to her house and the driveway servicing Honeybrook CSA parallel each other, creating an ongoing potential for traffic accidents as she enters her property from Chesterfield-Georgetown Road while vehicles are exiting the CSA:

> If I'm coming down Chesterfield-Georgetown Road in this manner to approach my home, I have to pass their driveway [servicing the CSA], and as I stated, that when you come up the hill, we have to slow down significantly and when we put on our blinker and slow down to enter our driveway, which is directly parallel to their driveway, we are nearly T-boned or we have people who pull out because they assume that we want to pull into the farm, and the fact that there has not been an accident to date is amazing.

Ms. Mills commented on the dust emanating from the driveway:

> So during the summer we can't have our windows open to our home. We have to run our air conditioner. . . [W]e can't enjoy our back yard[] because the driveway [servicing the CSA] runs the entire length of my property, so this dust filters in both directions, but primarily, I would say the Niemiecs property impact on a daily basis, not just from the pick up shares but the amount of truck traffic that runs in and out. . . [E]ven on a nonwindy day, you will see the dust billowing into my driveway and my home. You can actually see it on the windowsills.

Mrs. Mills was also concerned about an increase in the

intensity of the Honeybrook CSA operation and the change in use since she became a resident:

> I've got to assume that because the pick up location is here [at the Holloway property], that as they grow and as they expand their business from two days pick up and two days of you pick that this is going to expand to what they have in their other location to a seven day a week of operation of pick up which will mean that there's no day that I can use my property and enjoy my property which I have a significant investment into. . .
>
> Now, I understand that I bought a property that was on an agricultural zone, but when I purchased the property there was no way that we envisioned what's happening now or any of my neighbors or anyone in the surrounding area, and I'm not saying that they don't have a right to do that, but I think they need to mitigate their impact on us.

Mrs. Mills also complained about the poor condition of the driveway, explaining that it contained several potholes, and that automobile traffic would occasionally drive over her property line rather than stay on the travelled driveway servicing the Honeybrook CSA. In support of her complaints about dust and poor driveway conditions, Mills requested permission during the public comment period to submit an array of photographs after the hearing was concluded. The undersigned granted her request, required that copies be transmitted to counsel for Chesterfield and Holloway, and reviewed the photographs after counsel had the opportunity to do so.

On the other hand, both Bob Smith (a Honeybrook CSA member for two years) and Scott Williams (a Honeybrook CSA member in 2011) disagreed with Ms. Mills, testifying that driveway traffic was minimal and that, according to Williams, there was "zero dust". Williams also observed that maintaining the driveway's existing dirt-gravel consistency kept speeds down and that paving the driveway would increase runoff. Smith did observe that when exiting the driveway onto Chesterfield-Georgetown Road, "you do have to watch out" to the left.

Honeybrook CSA member Vincent Ciuale testified "there's a traffic issue in terms of the safety of exiting" and "both sides have admitted to it". However, he did not feel that a traffic study was needed: "I think you just get the speed down to 15 miles an hour so you have time to

look and then whoever is coming down will have time to stop." Mr. Ciuale "seldom" saw more than 2 or 3 cars anytime at the Honeybrook CSA, and he preferred the existing composition of the driveway because paving encourages increased motor vehicle speed.

I submit the above findings to the SADC for its recommended determination to the BCADB in accordance with N.J.S.A. 4:1C-10.1c and N.J.A.C. 2:76-2.10(c)3.

/s/ Brian D. Smith
Brian D. Smith, Esq.
Chief of Legal Affairs

II. SADC Recommendations to the BCADB

The issues in this case are whether Holloway should prepare a traffic study and pave approximately 481' of the driveway servicing the Honeybrook CSA operation. The Committee concurs with the hearing officer's finding that Honeybrook CSA's shareholder payments can be considered income from the agricultural and/or horticultural production of the Holloway farm.

As indicated earlier, the Holloway property is a preserved farm under the ARDA and is subject to permanent agricultural restrictions set forth in a recorded deed of easement that run with the land.

Paragraph 2 of the March 1985 deed preserving the Holloway farm property provides, in pertinent part, as follows:

> 2. The Premises shall be retained for retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L.1983, c.32 and all other rules promulgated by the State Agriculture Development Committee. Agricultural use shall mean the use of the land for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the whole-sale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm wastes, irrigation, drainage and water management, grazing and conservation.

We are satisfied that the Honeybrook CSA, in which the agricultural output of the Holloway farm property is sold to the CSA's shareholders, is a common farmsite activity consistent with paragraph 2 of the deed of easement, as the CSA operation involves "production, harvesting, storage, grading, packaging. . .and the wholesale and retail marketing of crops, plants. . .and other related commodities. . .".

N.J.S.A. 4:1C-9, which lists the agricultural operations or practices entitled to RTFA protection ("section 9 activities"), provides as follows:

> Notwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary, the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al. [sic]), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may:
>
> a. Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System;
>
> b. Process and package the agricultural output of the commercial farm;
>
> c. Provide for the operation of a farm market,

including the construction of building and parking areas in conformance with municipal standards;

d. Replenish soil nutrients and improve soil tilth;

e. Control pests, predators and diseases of plants and animals;

f. Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas;

g. Conduct on-site disposal of organic agricultural wastes;

h. Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm;

i. Engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of P.L.2009, c.213 (C.4:1C-32.4 et al.), as applicable, and the rules and regulations adopted therefor and pursuant to section 3 of P.L.2009, c.213 (C.4:1C-9.2); and

j. Engage in any other agricultural activity as determined by the State Agriculture Development Committee and adopted by rule or regulation pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

We conclude that Holloway and Honeybrook CSA are engaging in activities that may be protected by the RTFA in accordance with N.J.S.A. 4:1C-9. The 2011 FA-1 form shows that Holloway produces agricultural and horticultural crops in the form of various fruits, vegetables and herbs (N.J.S.A. 4:1C-9a.), and Honeybrook CSA processes and packages those commodities for pick up by and/or delivery to its shareholders (N.J.S.A. 4:1C-9b.). The SADC further finds that Honeybrook CSA offers a type of on-farm direct marketing method and facility comprising a “farm market”.

"Farm market" is defined in N.J.S.A. 4:1C-3 as:

> A facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51% of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area shall be devoted to the sale of agricultural output of the commercial farm, and except that if a farm market is located on land less than 5 acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least $2,500.

The Honeybrook CSA engages in the retail sale of the Holloway commercial farm property's agricultural output through a paid subscription by the CSA's shareholders-members, and Honeybrook's barn-distribution center is the structural facility in which the CSA organizes and dispenses members' farm product shares. The hearing officer found that Honeybrook CSA's operating income is derived almost exclusively from the sale of member product shares, and that almost all of the usable space in the barn-distribution center is devoted to the organizing and dispensing of product shares that have already been sold to the members' by their subscription payments. Accordingly, Honeybrook CSA meets the statutory definition of "farm market" because it engages in the wholesale or retail marketing of Holloway's agricultural output and because it satisfies the income and sales area criteria for retail markets. We also note that Honeybrook CSA is a permitted agricultural activity entitled to protection under Chesterfield Township's Right to Farm ordinance at Section 62-1B.(11).

The SADC has concluded that Honeybrook CSA is engaging in agricultural activities specifically permitted, and potentially protected from municipal regulation, by N.J.S.A. 4:1C-9a., b. and c. We must now apply the principles of Township of Franklin v. den Hollander, 338 N.J.Super. 373 (App.Div. 2001), affirmed 172 N.J. 147 (2002) to determine whether, and to what extent, the activities preempt Chesterfield Township's requirement that Holloway conduct a traffic study and pave the driveway servicing the CSA facilities from Chesterfield-Georgetown Road to the facility gate approximately 481'

from the road.

The Appellate Division, as affirmed by the Supreme Court, provided CADBs and the SADC with the appropriate scope of review for RTFA disputes between a commercial farmer and a municipality:

> While we recognize that the preemption doctrine may appear to have expansive and unlimited jurisdiction over agricultural practices to the CA[D]B or SADC, we conclude that the legislative imperative requiring attention to public health and safety also imposes a limitation on such jurisdiction and requires the respective boards to consider the impact of municipal land use ordinances. . .By including the issue of public health and safety as a limitation on the scope of the [Right to Farm] Act, the Legislature demonstrated an intent to impose on the CA[D]B and SADC an obligation to consider these factors in all contexts, including relevant local land use ordinances. . .
>
> (338 N.J.Super. at 392).

That portion of the Appellate Division's decision is entirely consistent with the Legislature's requirement in the last clause of the introductory paragraph to N.J.S.A. 4:1C-9 that, in order to engage in section 9 activities free of municipal control, a threshold determination must be made that the agricultural activities do not pose a direct threat to public health and safety. We interpret that clause and the den Hollander decisions to mean that if a commercial farm's agricultural activity poses a direct threat to public health and safety, then the jurisdictional limitation on CADB and SADC decision making applies and the activity is not eligible for RTFA protection.

The SADC concludes that the protection against direct threats to public health and safety is one of the core purposes and a jurisdictional requirement of the RTFA. Consistent with our understanding of the den Hollander decisions, the potential to preempt local ordinances by engaging in section 9 activities involves a balancing of farming and municipal interests only *after* it has been determined that the agricultural activities do not pose a direct threat to public health and safety.

In affirming the Appellate Division's decision in den Hollander, the Supreme Court affirmed the Appellate Division's decision and incorporated that balancing test

when a CADB and the SADC consider the effect of municipal ordinances on the agricultural operations of a commercial farm:

> Agricultural boards will have to deal with an array of matters that are within the traditional jurisdiction of local authorities such as hours of operation, lighting, signage, ingress and egress, traffic flow, and parking, to name just a few. In those circumstances boards must take into account the interests of farmers, while simultaneously 'consider[ing] the extent of [the] use [of agricultural management practices] and consider the limitations imposed on such uses by a municipality.'
>
> (172 N.J. at 153).

This balancing approach is not only required by the Supreme Court; public support of a landowner's ability to engage in generally accepted agricultural practices will be eroded if a perception exists that the CADB or SADC has given a commercial farmer the right to operate regardless of the consequences. The Supreme Court, quoting the Appellate Division ruling in den Hollander, stated:

> . . . although the CA[D]B and the SADC have primary jurisdiction over disputes between municipalities and commercial farms, the boards do not have *carte blanche* to impose their views. Because the authority of the agricultural boards is not unfettered when settling disputes that directly affect public health and safety, the boards must consider the impact of the agricultural management practices on public health and safety and 'temper [their] determinations with these standards in mind.'
>
> [172 N.J. at 151]

In arriving at an appropriate balance after determining that the agricultural activities in dispute do not pose a direct threat to public health and safety, the Committee first considers the agricultural practices at issue, with the clear understanding that section 9 activities have been specifically identified by the Legislature as entitled to protection from unreasonable local ordinances. Next, we refer to the relevant local ordinances in order to provide some sense of the nature and extent of the municipal interests at stake.

Traffic study

The disputed activity at Holloway essentially involves the health and safety impacts from traffic entering and exiting the Honeybrook CSA. We conclude that the generation of vehicles and traffic from a farm market or CSA can be a threat to public safety depending on various circumstances, including the size of the facility and number of customers, the location and configuration of the property upon which the farm market or CSA exists, and adjoining road grids and traffic patterns. All of those factors were carefully examined by the hearing officer.

Initially we note that in a prior RTFA decision, the SADC recognized that traffic created by a generally accepted agricultural operation was a "legitimate [public health and safety] issue requiring further study and reasonable resolution by the parties. . ." (In the Matter of Hopewell Valley Vineyards, Hopewell Township, Mercer County, adopted February 24, 2011, p. 21).

Chesterfield Township seeks a traffic study from Holloway based on Section 130-105 enabling the land use board to require "additional information" from a site plan applicant if the property's use and/or condition pose undefined "special problems" or "unique circumstances".

Holloway and Honeybrook CSA operate a commercial enterprise on a flag lot whose sole ingress and egress point is a driveway having a sight distance of only 100'-150' to the left upon exiting onto the northbound lane of Chesterfield-Georgetown Road, a municipal road having a posted speed limit of 45 m.p.h.

The sight distance problem for vehicles exiting the driveway also applies to Chesterfield-Georgetown Road southbound traffic, which is travelling up a grade with the driveway hidden on the right.

The SADC takes notice of various on-line materials providing stopping distances based on vehicular speed. The "Drive and Stay Alive, Inc." website divides the analysis into "Speed", "Thinking Distance", "Braking Distance" and "Overall Stopping Distance". At 40 m.p.h., the "Thinking Distance" is 40 feet and the braking distance is 80 feet,

for an overall stopping distance of 120 feet. The New Jersey Motor Vehicle Commission's on-line sample test for obtaining a driver's license contains questions and answers including: "What is the stopping distance on a dry road at 50 m.p.h?" Answer: "243 feet". We gather from the above information that the orientation of the driveway vis-à-vis southbound traffic on Chesterfield-Georgetown Road poses a clear risk of motor vehicle accidents.

The existence of an accident risk at the intersection of the driveway and Chesterfield-Georgetown Road was also confirmed in testimony by Honeybrook CSA members. Bob Smith observed that "you do have to watch out" to the left when exiting from the driveway onto the main road, and Vincent Ciuale stated "there's a traffic issue in terms of the safety of exiting" that "both sides [Holloway and Chesterfield Township] have admitted to. . ." Thus, the potential for personal injury and property damage from a traffic accident occasioned by use of the driveway servicing the Honeybrook CSA is apparent to a lay person. We reject the argument that because no traffic counts were taken and no accidents have occurred, there is no need for a traffic study.

Based on all of the above factors, the SADC is of the opinion that the township made a *prima facie* case that vehicular traffic generated by the Honeybrook CSA, coupled with the configuration and location of the Holloway property and driveway, poses a direct threat to public health and safety on Chesterfield-Georgetown Road.

The SADC acknowledges that a traffic study will entail an expense of some $3,000.00 to Holloway. Nevertheless, we recommend that Holloway pay for the study to clarify the nature and extent of the threat to public health and safety in order for the Honeybrook CSA operation to be eligible for RTFA protection.

Having concluded that a traffic study should be prepared by Holloway, the SADC stresses that this recommended decision is limited to the specific facts of this case, including the particular configuration of the Holloway property and the driveway intersection on Chesterfield-Georgetown Road. Our opinion in this case does not apply to all farm markets and all CSAs.

The Committee also makes no determination whether

Holloway will be required to satisfy any or all study recommendations, as we do not know what those recommendations will be at this time. Instead, we suggest that Holloway and the township work together in an amicable fashion to address the concerns and remedies which may be set forth in the study, and we observe that the balanced approach required of CADBs and the SADC in resolving RTFA disputes applies with equal validity to the parties' response to the traffic study. The Committee recommends that, in keeping with the balancing of interests required when resolving an RTFA dispute, an effective remedy or remedies for the traffic problems that may be posed by the Holloway property will attempt to achieve the *minimum* necessary to protect public health and safety and protect Holloway and Honeybrook CSA's economic viability. The Committee is aware of Chesterfield Township's leadership role in farmland preservation, transfer of development rights (TDR) and sensitivity to the needs of the agricultural community within its jurisdiction, and we expect the township to act consistently with those missions. The SADC also expects Holloway to act in good faith given its prominent role in the local and regional business community.

Should Holloway be unable or unwilling to comply with reasonable recommendations set forth in the study, or should the township assert that Holloway must comply with overly burdensome requirements, the SADC expects either or both parties to seek appropriate relief pursuant to the RTFA.

Paving the driveway servicing the Honeybrook CSA

The issue regarding the extent of paving involves the potential health and safety impacts from traffic on the driveway itself, including emergency vehicle access, and the nuisance impacts the driveway traffic allegedly poses to neighboring properties.

The township's demand for paving of the driveway servicing the Honeybrook CSA is based on municipal ordinance Section 130-10 (flag lots) and Section 130-96 (review standards). The flag lot ordinance requires paving of the "access strip" where an additional lot or use is proposed on the lot. We glean from Section 130-10 a municipal intent to promote satisfactory traffic movement within a flag stem servicing multiple uses on, or

subdivided lots within, a flag-shaped parcel. The Committee concludes, based on the evidence before the hearing officer, that the Holloway flag lot has not been further subdivided and that the Honeybrook CSA is the only use of the lot, as we consider the cultivation, harvesting and distribution of Holloway's agricultural and horticultural output through the CSA as one use. We note from the record before the hearing officer that the township did not provide sufficient evidence supporting its apparent argument that the Holloway flag lot supports more than one use.

With respect to Section 130-96, we understand that that ordinance is designed to guide municipal review of development applications such that residential and nonresidential uses can be made compatible. The hearing officer's findings indicate that the township relied on Section 130-96F.(10)(c) as support for paving the driveway servicing the Honeybrook CSA on the theory that such an improvement will "[p]rotect residential and nonresidential development from the noise, exhaust, emissions and other negative aspects of congestion of vehicular traffic." The clear implication of the township's position is that paving the driveway will protect the residential Mills property from any or all of the negative impacts listed in that ordinance.

However, there was insufficient evidence presented to the hearing officer tending to prove that use of the driveway servicing the Honeybrook CSA generated traffic "congestion", even at the maximum rate of 15 cars per hour. Nor was there sufficient record evidence that "noise, exhaust, emissions and other negative aspects of congestion of vehicular traffic" posed a direct threat to public health and safety. Instead, the record is limited to nuisance complaints about dust and the deteriorating condition of the driveway.

We have observed that once a commercial farm shows it is operating in a manner that does not pose a direct threat to public health and safety, the commercial farm is entitled to RTFA protection. In other words, the absence of such a direct threat is a condition precedent to commercial farm protection against unreasonable local ordinances and to the irrebuttable presumption that the agricultural activities do not create a public or private nuisance. However, once RTFA eligibility is satisfied,

the particular agricultural activities at issue must still be analyzed to determine whether there continue to be unreasonably adverse impacts on the general public. If such unreasonable impacts are found, then, even where no direct threat to public health and safety exists, the commercial farm operation may still be required to take reasonable steps to ameliorate such unreasonably adverse impacts in order to continue to enjoy the benefit of RTFA protection for the agricultural activities at issue. The den Hollander opinions instruct us that the precise efforts needed to mitigate unreasonable adverse impacts on adjacent property will entail balancing farming and municipal interests.

The SADC concludes that dust is generated by use of the driveway servicing the Honeybrook CSA, but that the dust does not pose a direct threat to public health and safety. In addition, the record is inconclusive with regard to whether the dirt-gravel driveway servicing the Honeybrook CSA generates dust in a manner that unreasonably impacts the occupancy of the Mills residence. Mills was sworn and provided testimony during the public comment portion of the hearing, but she was not cross-examined. Accordingly, the record does not reflect the frequency and duration of dust events or any kind of accurate measurement of adverse impacts. Nevertheless, we respectfully disagree with Holloway's position that since the amount of dust is unquantifiable, no action needs to be taken to mitigate the problem. While the SADC is satisfied based on Mills's testimony and photographs that her property is experiencing some quantity of dust generated from traffic generated by Holloway's commercial use of its property, we do not believe sufficient evidence was introduced by the township or by Mills demonstrating an unreasonably adverse impact on her residential occupancy.

The nature and extent of adverse impacts on the Mills and any other adjoining property will, in turn, have a direct bearing on the final key issue in this matter: whether the dust generated by traffic on the driveway servicing the Honeybrook CSA is a protected agricultural activity in accordance with Chesterfield's Right to Farm ordinance at Section 62-1D. because the dust may be considered an "attendant" or "incidental" component of the CSA operation.

Based on the limited record before the hearing officer

regarding dust generated by vehicular traffic on the driveway, the SADC will not render a specific recommendation related to the dust issue, but rather encourage the BCADB to undertake a careful analysis in arriving at its own decision. We anticipate that the BCADB will deal with the following issues in light of the RTFA, bearing in mind that nuisances occasioned by dust, for example, are subjective and typically unquantifiable:

- Frequency and duration of dust events;
- Whether the dust events result in unreasonably adverse impacts on Mills's residential occupancy;
- The nature and extent of any other unreasonable adverse impacts on Mills' residential occupancy as a result of use of the driveway servicing the Honeybrook CSA;
- The unique configurations of the Holloway and Mills properties;
- The degree to which Mills should tolerate some impacts associated with the Holloway farm property given the evolving nature of New Jersey's agricultural industry;
- Whether the dust generated on the driveway servicing the Honeybrook CSA is an "incidental" or "attendant" impact protected by Chesterfield's Right to Farm ordinance;
- Analyzing appropriate methods that Holloway can employ to mitigate any unreasonable adverse impacts created by the driveway;
- The area(s) of the driveway that may be subject to any such mitigation methods;
- Current and future viability of Holloway and Honeybrook CSA as same bears upon the mitigation methods that may be recommended by the BCADB including, but not limited to, applying water, utilizing different driveway materials and treatments, and paving, that may effectively ameliorate the dust generated from the driveway.

Again, with respect to improvements to the driveway servicing the Honeybrook CSA, this recommended decision is limited to the particular facts of this case and does not apply to all farm markets and all CSAs.

Summary Recommendations

Based on the evidence submitted at the hearing and the above discussion, and provided Holloway and Honeybrook CSA comply with relevant state laws and regulations and do not pose a direct threat to public health and safety for reasons other than those in dispute at the hearing, the SADC recommends that Holloway obtain, at its sole expense, a traffic study by a licensed traffic engineer to assess the public health and safety issues that exist as a result of vehicular traffic generated by the Honeybrook CSA on Chesterfield-Georgetown Road, and to identify, if necessary, the corresponding potential remedies that could be employed to achieve protection of the public health and safety. The SADC further recommends that the BCADB determine whether the operation of the Honeybrook CSA causes an unreasonably adverse impact on the adjacent Mills or other property due to the dust created by use of the driveway servicing the Honeybrook CSA. If the BCADB finds that such unreasonably adverse impacts exist, the SADC recommends that the board determine what management techniques may be employed by Holloway to ameliorate the dust generation to an acceptable level.

For the SADC:

/s/ Susan E. Payne_____
Susan E. Payne,
Executive Director

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